IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 15799 of 2004(E)

PETITIONER:

K.BABU SURESH, KARUVATH HOUSE,
MANKULANGARA P.O., KODAKARA, TRICHUR 680 684,
(LAB-IN-CHARGE UNDER ORDERS OF DISMISSAL,
TRICHUR CO-OPERATIVE SPINNING MILLS LTD.)

BY ADV. SRI.THAMPAN THOMAS
SRI.SHAFFIE THOMAS
SRI.C.A.JOJO
SMT.K.S.SABITHA
SRI.PRAMOD JOHN

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
SECRETARY, INDUSTRIES DEPARTMENT, SECRETARIAT,
TRIVANDRUM.

2. THE SECRETARY TO GOVERNMENT
CO-OPERATIVE DEPARTMENT, TRIVANDRUM.

3. THE DIRECTOR OF HANDLOOM,
GOVERNMENT OF KERALA, TRIVANDRUM.

4. THE TRICHUR CO-OPERATIVE SPINNING
MILLS LTD., VAZHANI P.O., THRISSUR 680 589,
REPRESENTED BY ITS MANAGING DIRECTOR.

5. THE MANAGING DIRECTOR, THE TRICHUR
CO-OPERATIVE SPINNING MILLS LTD., VAZHANI P.O.,
THRISSUR-680 589.

6. THE CHAIRMAN, THE TRICHUR CO-OPERATAIVE
SPINNING MILLS LTD., VAZHANI P.O., THRISSUR 680589

BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/02/2007, ALONG WITH WPC NO. 12686 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C).No. 15799/2004

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE JUDGMENT DTD.5.1.2004 IN O.P.NO.3255/01 OF THIS COURT.

P2. COPY OF THE REPRESENTATION DTD.19.1.2004.

P3. COPY OF THE -DO- DTD.12.5.2004.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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W.P.(C).Nos.15799/2004 & 12686/2006

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Dated this the 26th day of February, 2007

J U D G M E N T

The petitioner was proceeded against in disciplinary proceedings by the respondents. The same originally ended in a dismissal order which was challenged by the petitioner in O.P.No.3255/2001. By Ext.P1 judgment, a learned Single Judge of this court quashed the punishment of dismissal on the ground that it has not been issued by the proper authority. At the same time, the learned Single Judge gave the respondents liberty to pass fresh orders in the disciplinary action against the petitioner. The respondents took up the matter in appeal before a Division Bench, in W.A.No.371/2005, which was also dismissed by Ext.P2 judgment in W.P(C).No. 12688/2006, upholding the judgment of the learned Single Judge. In these writ petitions the petitioner now challenges Ext.P3

order in W.P(C).No.12686/2006, by which the respondent continued the disciplinary proceedings.

2. W.P(C).No.15799/2004 is filed by the petitioner for a direction to the respondents to reinstate the petitioner in service in view Ext.P1 judgment in W.P(C).No. 12686/2006. According to the petitioner, when the punishment of dismissal from service is set aside, automatically he is entitled to be reinstated before proceeding further with the disciplinary proceedings. I also note that in that case there is an interim order directing the respondents to pay to the petitioner an amount of Rs.50,000/- as portion of salary due to him, subject to further adjustments. It is admitted before me by the petitioner that the said amount has been paid.

3. I have heard both sides.

4. In so far as in Ext.P1 judgment in W.P(C). No. 12686/2006, after setting aside the order of dismissal, the learned Single Judge has not found it necessary to direct reinstatement of the

petitioner and the petitioner had not prayed for the same also, I do not think that I can now direct the respondents to reinstate the petitioner. Further, quashing of the dismissal order with a further direction permitting the society to continue the disciplinary proceedings only means that the petitioner would be put back in the same position before passing of the order of dismissal. It is not disputed before me that the petitioner was under suspension pending disciplinary proceedings at that time. The learned Single Judge also observed that the respondents cannot dismiss the petitioner from service with retrospective effect from the date of suspension. In the above circumstances, it cannot be disputed that the result of Ext.P1 is that the petitioner would continue to be under suspension pending further proceedings as permitted by this court in the earlier writ petition confirmed in the writ appeal. If that be so, the petitioner would certainly be entitled to subsistence allowance as applicable

under law. In the above circumstances, these writ petitions are disposed of with the following directions:

The respondents shall take Ext.P3 to its logical conclusion as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. However, the petitioner shall be paid subsistence allowance as applicable under law, after adjusting the amounts already paid pursuant to the interim orders in W.P(C).No.15799/2004. Needless to say, it would be open to the petitioner to challenge any orders passed pursuant to Ext.P3.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.